

BOARD OF APPEALS CASE NO. 4940

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BEFORE THE

APPLICANT: Gregory Transportation, Inc.

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ZONING HEARING EXAMINER

REQUEST: Special Exception to store  
school buses in the Agricultural District;  
4125 Rock Run Road, Havre de Grace

\*

OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/14/99 & 7/21/99

HEARING DATE: August 25, 1999

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Record: 7/16/99 & 7/23/99

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Gregory Transportation, Inc., is requesting a Special Exception to Section 267-53(D)(1) of the Harford County Code, to permit storage of school buses in an Agricultural District.

The subject parcel is owned by Ann Gregory, Anne Gideon and Robert Gelder. The property is located at 4125 Rock Run Road in the Second Election District. The parcel is identified as Parcel No. 22, in Grid 3-A, on Tax Map 37. The parcel contains 17 acres, m/l, all of which is zoned Agricultural.

Mr. Edward Beck appeared and testified that he is a Supervisor of Transportation for the Harford County Board of Education, with his primary responsibility being the Route 40 corridor. Mr. Beck said that he is familiar with Gregory Transportation, Inc. He said the Applicant has a contract with the Board of Education to operate school buses primarily in the Havre de Grace and Aberdeen areas. Mr. Beck said that Gregory Transportation currently has 15 buses, plus one spare and that over the years the routes assigned to Gregory Transportation, Inc. have increased because it is the policy of the Board of Education to give additional routes to school bus contractors who do a good job. Mr. Beck said that the current location of Gregory Transportation, Inc. meets with Board of Education approval and that he has not had complaints about Gregory Transportation, Inc. or its present location.

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Ms. Pamela Gregory Cohen appeared and testified that she is the President of Gregory Transportation, Inc., which has a contract with the Harford County Board of Education to operate school buses primarily in Havre de Grace, Aberdeen and surrounding areas. Ms. Cohen said that her father obtained his first contract with the Board of Education for the 1979-80 school year and that the bus service has been operating from the same parcel since that time. Ms. Cohen said that Gregory Transportation, Inc. currently has 15 buses and one spare which operate from the parcel. The witness said that she would eventually like to increase the total number of buses to 20 with a spare bus. Ms. Cohen said that the buses leave in the morning for the morning routes and return at about 9:00 a.m., and then again leave the subject parcel between 1:45-2:00 p.m. for the afternoon routes. The witness said that the buses operate 180 days year and that there is no night usage and no extra lighting is required for the buses. Ms. Cohen said the drivers park their private vehicles on the subject parcel while working. Ms. Cohen said that her father passed away in 1993 and that she has been operating the transportation service since that time. Ms. Cohen said that there is a shop on the parcel where routine maintenance is performed, but that major mechanical work to the buses is not performed on the site. The witness said she did not believe approval of the Special Exception on the subject parcel would have any greater impact than if approved elsewhere in the zoning district because Gregory Transportation, Inc. has operated school buses on the subject parcel for the last 20 years without complaints to the Department of Planning and Zoning or the Board of Education.

Mr. Anthony S. McClune, Manager, Division of Land Use Management of the Department of Planning and Zoning, appeared and testified that the Department of Planning and Zoning discovered that the Applicant had not obtained a Special Exception to operate the bus service when the property owners filed a petition to subdivide the subject parcel.

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Mr. McClune said that the Department has not received complaints with respect to the Applicant's operation, and that the Applicant can meet or exceed all conditions set forth in Section 267-53(D)(1) for the storage of the school buses. Mr. McClune said that the Staff has also considered the requirements of Section 267-9(l) and that Applicant meets or exceeds all of the requirements set forth in that Section. Mr. McClune said that the Staff also considered whether or not approval of the school bus operation on the subject parcel would have any greater impact if approved at that location than if approved elsewhere in the Agricultural District and he said that the Staff felt that the impact would not be any greater. The witness also said that the Department would agree to a maximum of 20 buses, plus one spare, because the storage area is adequately screened.

**CONCLUSION:**

The Applicant is requesting a Special Exception to Section 267-53(D)(1) to store commercial vehicles in an Agricultural District.

Section 267-53(D)(1) provides:

- (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:
  - (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
  - (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
  - (c) A minimum parcel area of two (2) acres shall be provided.

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The uncontradicted testimony is that the Applicant wishes to store 20 school buses plus a spare bus on the subject parcel, which the Department of Planning and Zoning indicates is adequately screened. The evidence indicates that the parcel currently contains 17 acres and the Applicant has testified that the request is for the storage of school buses and minor maintenance and that they will not conduct sales or service of construction or industrial equipment on the parcel, nor do they intend to sell or service farm vehicles and equipment.

A Special Exception is a use which has been legislatively predetermined to be conditionally compatible with uses permitted as of right in the district. Creswell v. Baltimore Aviation Service, Inc., 250 Md. 712 (1970). The most recent comprehensive and definitive statement of the law of special exceptions is found in the case of Mossburg v. Montgomery County, 107 Md. App. 1 (1995), hereinafter referred to as "Mossburg". Mossburg chronicled the history and development of special exception law in Maryland and set forth a definitive statement of the current law regulating a special exception. The Court of Special Appeals in Mossburg said:

"Thus, it is not whether a special exception/conditional use is compatible with permitted uses that is relevant in this administrative proceeding. The legislative body, by designating the special exception, has deemed it to be generally compatible with other uses. In special exception cases, therefore, generally compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a permitted use by way of special exception will have adverse effects, it is whether the adverse effect in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is considered by the agency."

Once the Applicant meets the burden of demonstrating compliance with the Code requirements set forth in Section 267-53(D)(1), the burden shifts upon others to produce competent evidence that there is a "greater impact at the present location than another locations similarly zoned". In the instant case, there was no evidence whatsoever introduced that the requirements of Section 267-53(D)(1) cannot be met. There is no evidence of greater impact of this use at this location than elsewhere in the zone, nor is there any evidence that approval of the requested variance will impact the "Limitations, Guides and Standards" set forth in Section 267-9(I).

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Therefore, it is the recommendation of the Hearing Examiner that the requested Special Exception be approved, subject to the following conditions:

1. That the Applicant shall obtain a zoning certificate for the requested use.
2. That the Applicant shall be limited to 20 school buses with one spare bus for a total of twenty-one (21) school buses.
3. That the Applicant shall maintain the existing screening.

Date 9/21/99

Lee Q. Hinderhofer  
L. A. Hinderhofer  
Zoning Hearing Examiner